

**Mary D. Shahid**  
Member  
Admitted in SC

January 25, 2018

**VIA ELECTRONIC AND US MAIL**

James F. Choate, III, Esq.  
Office of Counsel, Charleston District  
U. S. Army Corps of Engineers  
69A Hagood Avenue  
Charleston, SC 29403

James.F.Choate@usace.army.mil

Re: Pine Hope Plantation

Dear James:

Charleston  
Charlotte  
Columbia  
Greensboro  
Greenville  
Hilton Head  
Myrtle Beach  
Raleigh

This letter is in response to matters discussed in your office on December 14, 2017, related to activities undertaken as part of an ongoing and active silviculture operation at Pine Hope Plantation ("Pine Hope"), owned by Henry Brown, and located in Berkeley County, S. C. Thank you for your patience regarding the timing of our response. With the holidays and weather events that occurred earlier this month, I've been delayed in completing this response.

The meeting at your office on December 14<sup>th</sup> followed a site visit which occurred on November 21, 2017. While the site visit did not include the parties' attorneys, it is my understanding that the matters discussed at the site visit were consistent with the Corps' presentation on the 14<sup>th</sup>. The Corps indicated the following observations and requests regarding the silviculture operation at Pine Hope.

- Recent forestry management activities include the construction of forest management roads in Vanilla Bay (Stand 12). These roads were constructed prior to 2010 in anticipation of a hardwood logging operation. The roads were constructed from borrow material taken from long linear borrow pits which parallel the forest management roads. The Corps has requested a low water crossing installed on the lateral roads built in the bay to facilitate water movement from one side of the road to the other during high water events. The specific installation includes the placement of rock at the existing forest floor

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level. In addition, a permanent ditch plug will be installed at the head of the bay. The plug height will be at the surrounding forest floor level in the bay.

**Property Owner's Response:** The property owner agrees to facilitate the flow of water as suggested by the Corps and described above. I'm attaching as Exhibit A to this letter a depiction indicating proposed locations for installation of three pipes to facilitate the low water crossing between the lateral ditches and the proposed location of a ditch plug. If this proposal meets with the Corps' approval the property owner can commence this work immediately.

- USACE believes a blue line stream was impacted in the vicinity of the excavated area between the residential structure located on Pine Hope and Vanilla Bay identified as "Mary Anne Branch." The Corps considers these impacts to be unauthorized and is seeking mitigation for these impacts.

**Property Owner's Response:** There is no dispute between the parties as to the existence of on-going silviculture operation at Pine Hope. As part of this operation, the property owner excavated linear borrow pits for road construction material. These linear features hold water consistently, therefore maintaining the surrounding groundwater table. The property owner disputes the Corps' allegations that the full extent of the linear borrow pits is in the location of "Mary Anne Branch." Moreover, a review of the South Carolina Forestry Commission's website and information related to forestry BMP's demonstrates a policy of preventing the conversion of wetlands to uplands. In this instance there is no conversion to uplands in the creation of the existing water features.

Even if the Corps believes that the excavation for creation of these linear features exceeds the silviculture exemption, the work in question was completed by April 21, 2009, as evidenced by the image attached to this letter as Exhibit B. In fact, Mr. Baughman discovered satellite imagery dated 2/10/2008 which, while not as clear, also shows the excavation as completed. The Corps initiated this investigation by letter dated September 9, 2014, which can be considered the date of accrual of any claim the Corps may have against the property owner. Yet the excavation in question was completed more than five years before accrual, as confirmed by the April 21, 2009 photo.

The property owner is not inclined to mitigate for matters that may be considered exempt and are likely to be excluded by the statute of limitations. However, the property owner desires for this investigation to be resolved and closed. Therefore, we note that presently the property owner has 385 acres located along the U. S. Forest Service boundary, directly west of what the U. S. Forest Service designates as "compartment 89." The applicant has taken the following measures to buffer and

protect the U. S. Forest Services' land. Exhibit C depicts the buffer which is at least 6,654 feet long,<sup>1</sup> has an average width of 35', and has a total area of 5.3 acres

This voluntary relinquishment of the use of this property in order to provide the Forest Service a buffer constitutes preservation of surrounding and adjacent wetland areas both on the Forest Service property and on Pine Hope. In accordance with the Corps' mitigation rule, a permittee-responsible mitigation plan means aquatic resource restoration, establishment, enhancement, and/or preservation activity. "Preservation" is defined as "the removal of a threat to, or preventing the decline of, aquatic resources by an action in or near those aquatic resources. This term includes activities commonly associated with the protection and maintenance of aquatic resources through the implementation of appropriate legal and physical mechanisms." (USACE "Compensatory Mitigation Guidelines October 7, 2010." [http://www.sac.usace.army.mil/Portals/43/docs/regulatory/Guidelines\\_for\\_Preparing\\_a\\_Compensatory\\_Mitigation\\_Planf.pdf](http://www.sac.usace.army.mil/Portals/43/docs/regulatory/Guidelines_for_Preparing_a_Compensatory_Mitigation_Planf.pdf).) This buffer, serving as a fire break, will protect adjacent wetland areas from fire damage. A high intensity fire is detrimental to wetland areas because the fire consumes the detritus layer which reduces nutrients and increases the potential for soil erosion.

The property owner commits to continued maintenance and establishment of this buffer for the benefit of the Forest Service. In seeking mitigation for the alleged impacts to a blue line stream, the Corps should give weight to a landowner's commitment to allow the Forest Service to maximize public lands by providing a sufficient buffer on private property to eliminate the need for the Forest Service to use managed lands.

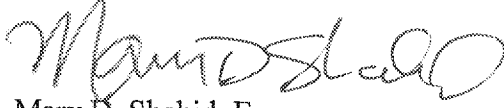
We hope the commitments set forth in this response are sufficient to bring closure to this matter.

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<sup>1</sup> The property owner has advised that the Exhibit doesn't represent the full extent of the buffer, which extends north to Witherbee Road, as depicted on the second page of Exhibit C. This extension more than doubles the distance reflected on the first page of Exhibit C, and the acreage.

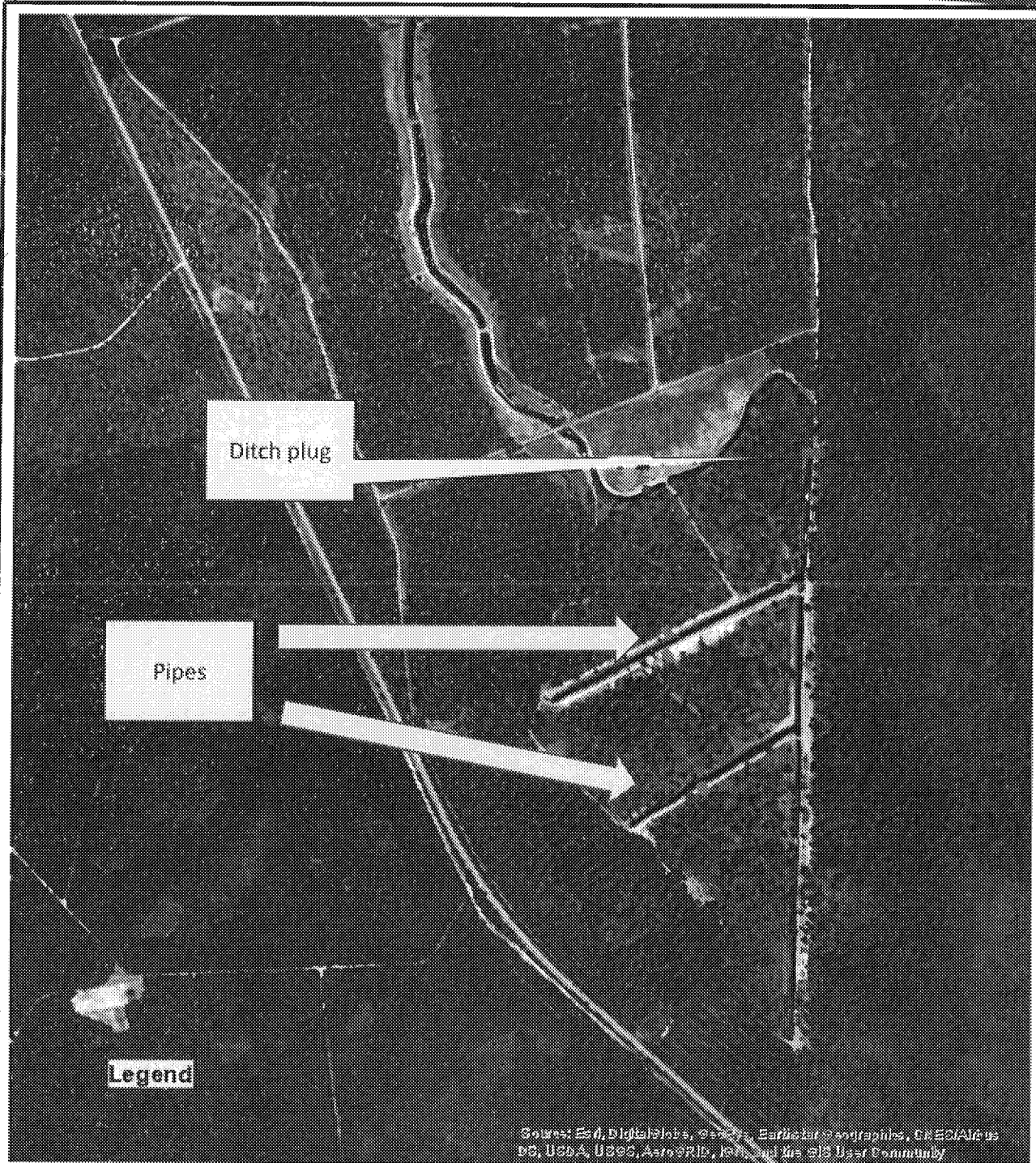
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James Choate, Esq.  
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Very truly yours,

A handwritten signature in dark ink, appearing to read 'Mary D. Shahid', written in a cursive style.

Mary D. Shahid, Esq.

cc: W. Mac Baughman, Newkirk Forestry and Land Management  
The Honorable Henry E. Brown, Jr.  
Brooks B. Andrews, Assistant U. S. Attorney, District of S. C.  
Travis Hughes, Regulatory Division Chief, Charleston District ✓  
Robin Collier- Socha, Branch Chief, Charleston District ✓  
Tyler Sgro, Project Manager, Charleston District ✓



Stand &amp; LIDAR maps

Date: 12/22/2017

Mac Baughman



N

**H. Brown**

875 437.5 0 875 Feet



Revised by	Date	Revision
WMB	12/22/17	Zoomed the view in

USDA NAIP photo from 4/21/2009







Common Boundary Fireline	<div style="display: flex; align-items: center;"> <div style="margin-right: 10px;"> N  </div> <div> <b>H. Brown</b>  1,100    550    0    1,100 Feet  </div> </div>		
Date: 1/24/2018			
Mac Baughman			
	Revised by	Date	Revision
	WMB	1/24/2018	Zoomed

## EXHIBIT C-2

FULL EXTENT OF COMMON BOUNDARY FIRELINE  
WITH USFS.

